IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FOURTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION No: 22806 of 2004

Between:

1 The Commissioner and Director of Agriculture, A.P. Hyderabad
2 The Jt. Director of Agriculture, Medak District at Sangareddy

..... PETITIONERS

AND

Sri Mohd. Basheeruddin, Jr. Asst. O/o. The Asst. Director of Agriculture Narsapur,
Medak District.

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ or directions more particularly are in the nature of "WRIT OF CERTIORARI" dated 12-9-2003 in O.A.No. 169/98 on the file of the A.P. Administrative Tribunal, Hyderabad and to quash the same by holding as erroneous and contrary of law.

Counsel for the Petitioner: GP FOR SERVICES I

Counsel for the Respondent: MR.MOHD.GHULAM HUSSAIN.

The Court at the admission stage made the following:

ORAL ORDER:- (PER GB,J.)

The Writ Petition is filed by the Government assailing the order, dated 12.09.2003, passed by the A.P. Administrative Tribunal, Hyderabad, in O.A.No.169 of 1998.

2. The respondent was initially appointed as daily wage employee on 06.12.1974. While so, Government issued G.O.Ms.No.9, Finance and Planning (Fin. Wing PRC.VI) Department, dated 08.01.1981, directing to absorb all the employees who completed five years of service. Accordingly, the respondent was absorbed in to Last Grade Service in the year 1981 and thereafter, he was also promoted to the post of Junior Assistant in the year 1986. Since his probation was not declared, he filed O.A. before the Tribunal seeking a direction to the departmental authorities to declare his probation.

3. The learned Tribunal, after considering the matter, allowed the O.A. by an order, dated 12.09.2003, against which the present Writ Petition has been filed.

4. Learned Government Pleader submits that the order of the Tribunal is not sustainable, inasmuch as the very absorption of the respondent in Last Grade Service is illegal and contrary to G.O.Ms.No.9, and therefore, the question of declaring probation of the respondent does not arise.

5. This contention cannot be accepted at this belated stage and the Tribunal has amply observed in its Judgment as follows:

> "Thus, I have no hesitation to holding that there is a presumption that the conversion of the applicant to the post of Last Grade Service in 1981 must be deemed to be in accordance with G.O.Ms.No.9 of 1981 and other applicable Rules.

> There is another circumstances, which deserves consideration, in this case, is that the show cause notice is said to have been issued to the applicant as to why he should not be reverted back to the post of contingent service employee in 1998, almost 17 years after the conversion even so, from 1998 onwards, no action was taken against the applicant in pursuance of the show cause notice. All these lead to a presumption that the respondents have waived or relaxed all infirmities and irregularities, if any, in the conversion of the applicant to the Last Grade Service.
>
> In the result, at any rate, as seen above, the presumption is that his conversion and appointment to the Last Grade Service is regular. In the result, the O.A. deserves to be and hereby allowed. The case of the applicant for declaration of his probation shall be considered in accordance with Rules without raising the question of his conversion to the post of Last Grade Service from the Contingent Employee in the year 1981. His probation shall be declared accordingly. No order as to costs."

6. Admittedly, the respondent was absorbed in the year 1981 and promoted in the year 1984 and it would not be appropriate to unsettle the settled situation and it is also observed by the Tribunal that the respondent was given a show cause notice as to why he should not be converted to Contingent Service Employee, but no action has been taken, that itself goes to establish that the Government waived its right to convert the respondent to contingent employee. Thus, we do not find any ground to interfere with the order of the Tribunal.

7. Accordingly, the Writ Petition is dismissed. No costs.

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G. BIKSHAPATHY, J.

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P.S. NARAYANA, J.

Date: 14.02.2005

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To

1 The Commissioner and Director of Agriculture, A.P. Hyderabad.
2 The Joint Director of Agriculture, Medak District at Sangareddy.

3 2 CCs to the G.P. for Services-I, High Court of A.P., Hyderabad (OUT).

4 2 CD copies.